IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.639-MA of 2006
Date of Decision:05.02.2008

Income Tax Officer, Sangrur (now Sunam)

.....Petitioner

Vs.

Bhoj Raj

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Yogesh Putney, Advocate for the appellant.
Mr. K.L.Goyal, Advocate for the respondent.

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RAJESH BINDAL, J.

This is an application seeking leave to file appeal against the judgment whereby the respondent has been acquitted of the charges under Section 276-C and 277-C of the Income Tax Act, 1961 and Section 193 and 196 IPC.

It is not disputed that the tax as well as penalty was not held to be leviable by this Court in I.T.R.No.94 of 1987 decided on 27.9.2006 on the issue of quantum and on the issue of penalty in I.T.R. No.15-A of 1993 decided on 27.9.2006. Once in the quantum as well as in penalty proceedings, issue has already been decided in favour of the assessee, the present prosecution proceedings on the basis of alleged evasion of tax and penalty cannot continue. However, learned counsel for the applicant submitted that the department has already filed a Special Leave Petition in Hon'ble the Supreme Court against the judgment of this Court in I.T.A.No.94 of 1987 and I.T.R. No.15-A of 1993.

At this stage, keeping in view the fact that this Court has already held that the tax and penalty is not leviable on the assessee, the application for leave to appeal is dismissed. However, in case the judgment of this Court in I.T.R. No.94 of 1987 and I.T.R. No.15-A of 1993 is reversed by Hon'ble the Supreme Court and it is ultimately held that the respondent- assessee is liable to pay the tax and the penalty, the applicant will have right to get the present application revived.

February 05, 2008 **(RAJESH BINDAL)**
renu **JUDGE**